

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

CRL.A.No. 349 of 2003()

CC.553/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA
.....

APPELLANT: APPELLANT/COMPLAINANT.

G.MURALEEDHARAN NAIR, THATTEKKADU VEEDU,
PURAKKADU P.O. AMBALAPPUZHA, ALAPPUZHA.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENT: ACCUSED.

P.E.SHAJI, PALACKAPARAMBIL, EREZHA SOUTH
VAZHITHALA P.O. THODUPUZHA.

BY ADV. SRI.K.BABU THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. Thankappan, J.

Crl.A. No. 349 of 2003

Dated this the 29th day of March, 2007

JUDGMENT

The appeal is filed by the complainant against the acquittal order passed in C.C.No.553/2001 on the file of the Judicial Magistrate of the First Class-I, Alappuzha. The complaint was filed under section 138 of the Negotiable Instruments Act. In the complaint it is stated that the respondent borrowed an amount of Rs.81,500/- from the appellant and in discharge of the said debt, the respondent issued a cheque in favour of the appellant and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the respondent. On receipt of intimation of dishonor of the cheque , a lawyer's notice was caused to the respondent demanding of the amount covered by the cheque. Since the amount was not paid by the respondent, the complaint has been filed before the court. The court below had taken cognizance of the complaint and issued summons to the respondent and the case was posted to 16-3-2002. On 16-3-2002 as the appellant was absent, the respondent was

acquitted under section 256(1) of the Code of Criminal Procedure. Aggrieved by the above order, the appellant has approached this Court by filing this appeal.

2.Learned counsel for the appellant submits that the order under challenge is not in accordance with the principles laid down by this Court in decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003) and in G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825).

3. In the case at hand, the facts narrated above would show that the attendance of the appellant was not at all necessary. When the presence of the appellant was unnecessary, the trial court ought to have proceeded with the case by adjourning the same even if there was no representation on behalf of the appellant. In Don Bosco V. Partech Computers Ltd. (Supra) this Court held that **“the Magistrate did not apply his judicial discretion with the required caution, while dismissing the complaint and acquitting the accused”**. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice.

4. In the above circumstances, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to

the trial court for fresh consideration. Ordered accordingly. The trial court is directed to consider the matter afresh as per law.

The parties shall appear before the court below on 11-5-2007

K. Thankappan,
Judge.

It is relevant to note that only because of the absence of the appellant, the 1st respondent is dragged to this Court. Hence, it is only proper for this Court to allow a reasonable costs to the 1st respondent. Therefore, the appellant is directed to deposit before the court below an amount of Rs.2,000/- on or before the date of posting of the case. If the amount is deposited, the 1st respondent is permitted to withdraw the same.

K. Thankappan,J.

Crl.A.349/2003

Judgment

29-3-2007